

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte Radu

Appeal No. _____

Appellants: Bogdan Radu et al.
Serial Number: 10/710,497
Filed: July 15, 2004
Art Unit: 3612
Examiner: Gregory A. Blankenship
Title: AUTOMOTIVE STORAGE COMPARTMENT AND METHOD FOR
MAKING THE SAME
Confirmation No.: 4496
Atty. Docket No.: MASL-45

Cincinnati, Ohio 45202

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BRIEF ON APPEAL

This brief is in furtherance of Appellants' Notice of Appeal filed October 23, 2006, appealing the decision of the Examiner dated July 27, 2006, finally rejecting claims 1-4, 6-9, 18 and 19. A copy of the claims appears in the Appendix to this brief.

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I. Real Party in Interest

The real party in interest is International Automotive Components Group, LLC, of New York, New York, which is the assignee of the present invention.

II. Related Appeals and Interferences

There are no related appeals or interferences known to Appellants or Appellants' legal representative that will directly affect or be directly affected by the decision of the Board in the present appeal.

III. Status of the Claims

Claims 1-9, 18 and 19 are pending in the Appellants' application. Claims 1-4, 6-8, 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,575,528 to Tiesler et al. ("Tiesler") in view of an assertion as to what was allegedly "well known" in the art at the time of Appellants' invention. Claims 1 and 7-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,116,672 to Cannon et al. ("Cannon") in view of Tiesler and in further view of an assertion as to what was allegedly well known in the art at the time of Appellants' invention. All of the pending claims are the subject of this appeal. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

IV. Status of Amendments

There have been no amendments filed after the rejection mailed on July 27, 2006.

V. Summary of Claimed Subject Matter

Referring to Figs. 1 and 2 for the sake of exemplary illustration, Appellants' claim 1 is directed generally to an automotive interior trim assembly, such as door trim panel (10) for a door of an automobile, having a storage compartment (12) within a substrate (14) of the trim assembly. (Application at page 7, line 7 to line 10). The storage compartment (12) is adapted to couple to the substrate (14) of the trim assembly and adapted to store one or more items. (Application at Figs. 1 and 2; page 8, line 6 to line 14). The storage compartment (12) includes a compartment body (20) defining a cavity (22) to store the one or more items with an opening (24) for gaining access to the cavity (22). (Application at page 8, line 10 to line 14). The compartment body (20) includes at least one connecting member (26) integrally formed therein that is made from a first material. (Application at page 8, line 14 to line 22). The storage compartment (12) also includes a cover (30) including at least one connecting member (32) integrally formed therein that is made of a second material. (Application at page 8, line 23 to page 9, line 6). The melting points of the first and second materials are different (Application at page 9, line 4 to line 7). The body connecting member(s) (26) cooperate with the cover connecting member(s) (32) to couple the cover (30) to the compartment body (20). (Application at page 9, line 9 to line 17). The cover (30) is movable between an open position wherein the cavity (22) is accessible through

opening (24) and a closed position wherein the cover (30) overlies the opening (24). (Application at page 9, line 17 to line 22).

Appellants' claim 18 is directed generally to an assembly for an automotive interior, such as a door trim panel (10). (Application at page 7, line 7 to line 10). The assembly includes a first member, such as a compartment body (20), having at least one connecting member (26) integrally formed therein and formed of a first material. (Application at page 8, line 10 to line 22). The assembly further includes a second member, such as a cover (30), having at least one connecting member (32) integrally formed therein and formed of a second material. (Application at page 8, line 23 to page 9, line 6). The melting points of the first and second materials are different. (Application at page 9, line 4 to line 7). The first member connecting member(s) (26) and the second member connecting member(s) (32) cooperate to pivotally couple the first and second members together. (Application at page 9, line 9 to line 17).

VI. Grounds of Rejection to be Reviewed on Appeal

A. Whether claims 1-4, 6-8, 18 and 19 were improperly rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,575,528 to Tiesler et al. in view of what was allegedly "well known" in the art at the time of Appellants' invention.

B. Whether claims 1 and 7-9 were improperly rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,116,672 to Cannon et al. in view of Tiesler et al. and in further view of what was allegedly well known in the art at the time of Appellants' invention.

VII. Argument

A. Claims 1-4, 6-8, 18 and 19 were improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over Tiesler et al. in view of what was allegedly well known in the art at the time of Appellants' invention.

Claims 1-4, 6-8, 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,575,528 to Tiesler et al. ("Tiesler") in view of what was allegedly "well known" in the art at the time of Appellants' invention. Claims 1 and 18 are the only independent claims of this rejected group. Claim 1 is directed to an automotive interior trim assembly comprising:

a substrate; and

a storage compartment coupled to said substrate and adapted to store one or more items, said storage compartment comprising:

a compartment body defining a cavity adapted to store the one or more items and having an opening for gaining access to said cavity, said compartment body including at least one connecting member integrally formed therein made from a first material; and

a cover including at least one connecting member integrally formed therein and made from a second material having a different melting point from said first material, said at least one body connecting member cooperating with said at least one cover connecting member to couple said cover to said compartment body, said cover being moveable between an open position, wherein said cavity is accessible through said opening, and a closed position, wherein said cover overlies said opening.

Claim 18 is directed to an assembly for an automotive interior comprising:

a first member including at least one connecting member integrally formed therein made from a first material; and

a second member including at least one connecting member integrally formed therein and made from a second material having a different melting point from said first material, said at least one first member connecting member cooperating with said at least one second member connecting member to pivotally couple said first member to said

second member.

Because claim 18 is patentable for at least the reasons discussed with respect to claim 1, the remarks in this appeal will focus primarily upon claim 1 for this group of rejected claims.

The rejection of claim 1 should be reversed because the Examiner failed to present a *prima facie* case of obviousness. In particular, the Examiner's rejection of claim 1 should be reversed because Tiesler fails to teach or suggest the claimed invention and the Examiner's proposed modification is not in accordance with the law under 35 U.S.C. § 103. The Examiner has used improper hindsight reconstruction based on what was allegedly "well known" in the art at the time of Appellants' invention.

1. There is no teaching or suggestion of a modification of Tiesler that results in the claimed invention.

In the Office Action, the Examiner asserts:

Tiesler et al. disclose an automotive interior trim assembly comprising a substrate (60) and a storage compartment coupled to the substrate and adapted to store items. The storage compartment is comprised of a compartment body (36) that defines a cavity for storing items and has integral connecting members formed therein on element (40), as seen in Figure 2. A cover (50) has integral connecting members (52) formed therein to couple with the connecting members of the compartment body. The cover body (50) can be moved between an open position that allows one to access the cavity through opening (54).

(Office Action mailed March 7, 2006 at p. 2; Office Action mailed July 27, 2006 at p. 2).

The Examiner then admits: "Tiesler et al. do not disclose the claimed materials for the compartment body and cover." (Id.). Although claim 1 is devoid of any claim language directed to specific materials of the compartment body and the cover, Appellants assume that the Examiner's reference to material choice is perhaps an indirect manner

to reach the claim language of the "second material having a different melting point from said first material" recited in claim 1. To meet this recitation on different melting points, the Examiner further asserts:

Official notice is being taken that polybutylene terephthalate and polypropylene are well known in the automotive art, are commonly used to form parts of interior trim assemblies and have known properties.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to:

form the compartment body of Tiesler et al. of polybutylene terephthalate, and form the cover of Tiesler et al. of polypropylene,

as an obvious expedients to provide the components with the desired look, feel, weight, and strength resulting in the compartment body being formed of a material with a melting point higher than the melting point of the material that forms the cover.

(Office Action mailed March 7, 2006 at p. 3; Office Action mailed July 27, 2006 at p. 3).

The Examiner broadly asserts that it is well known in the automotive art to form interior trim assemblies from different materials. Thus, according to the Examiner it would have been obvious at the time of the invention to form the compartment body from a first material and the cover from a second material with the melting point of the first material different than the melting point of the second material. There is a leap of logic here that is simply not supported by the prior art evidence.

The Examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Only if the Examiner meets this burden does the burden shift to an applicant to come forward with the evidence or an argument. *Id.* If the examination at the initial stage does not produce a *prima facie* case of obviousness, then without more, the applicant is entitled to grant of

the patent. *Id.* A *prima facie* case of obviousness is established when the teachings from the prior art itself would appear to have suggested the plain subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 782 (Fed. Cir. 1993). In other words, to properly combine references to make a *prima facie* case of obviousness, there must have been some teaching or suggestion in either one of the references or both, or knowledge generally available to one of ordinary skill in the relevant art that would have led one skilled in the art to combine the relevant teachings of the references. *W.L. Gore & Associates v. Garlock, Inc.*, 220 USPQ 303, 311 (Fed. Cir. 1983).

Tiesler is directed to an overhead console assembly (12) for a headliner (14) having one or more accessory modules (34) coupled thereto. The accessory module (34) includes a module housing (36) having a top surface (38), a bottom surface (40), and a storage area (42) defined therebetween. Accessory module (34) may include a door (50) pivotally mounted to members (not numbered) on the bottom surface (40) of housing (36) by hinges (52). Door (50) extends between an open position and a closed position wherein door (50) is received in aperture (54).

Tiesler fails to teach or suggest a "compartment body including at least one connecting member integrally formed therein made from a first material" and a "cover including at least one connecting member integrally formed therein and made from a second material having a different melting point from said first material," as is specifically recited in claim 1. In fact, Tiesler fails to provide any teaching or suggestion of the type of materials used to form the accessory module. There is certainly no discussion of the melting points of the materials used to form the accessory module.

Moreover, there is nothing in Tiesler that would have motivated one of ordinary skill in the art to make the module housing (36) and the door (50) out of materials having different melting points.

For this teaching, the Examiner relies on what was "well known" in the art at the time of Appellants' invention. Assuming for sake of argument that it was well known to form interior trim assemblies from different materials, this does not inherently lead to the conclusion that it would have been obvious to form the module housing of Tiesler from a first material and to form the door of Tiesler from a second material having a melting point different than the first material. What motivation would one have to form the module housing and door of Tiesler out of materials with different melting points, as is suggested by the Examiner to reach claim 1? Without any specific teaching or motivation to the contrary, one of ordinary skill in the art would have perhaps more likely than not been motivated to form the connecting members from the same exact material and not from materials having different melting points. Tiesler does not provide such a contrary teaching or motivation. Moreover, the Examiner has failed to provide any credible teaching or motivation that would have caused one of ordinary skill in the art to deviate from making the connecting members from the same exact materials. In short, just because different materials may have been known for making trim assemblies, this does not somehow automatically lead to forming the module housing and door of Tiesler from materials having different melting points. Such a leap in logic is wholly unsupported by any of the prior art.

The distinction Appellants made in the Office Actions and continue to make in this appeal is not some trivial contrivance to overcome the prior art. There are

manufacturing and economic benefits gained from the invention of claim 1. For example, the claimed combination better allows coupling of the connecting members during formation thereof with no further manufacturing steps. To prevent fusion of the connecting members on the compartment body and the cover during a molding process, the melting point of one of the materials is different from the melting point of the other material. Tiesler is not directed to and does not recognize or address the various problems associated with the connection between the module housing and the door and thus does not realize the benefits of making these components from materials having different melting points. Moreover, there is no other significant advantage disclosed in Tiesler that would have motivated one of ordinary skill in the art to make these components from materials having different melting points. Again, only the present application and the Examiner make this suggestion. The Examiner cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to depreciate the claimed invention. *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988). Accordingly, for the reasons provided above, the rejection of claims 1-4, 6-8, 18 and 19 under 35 U.S.C. § 103(a) is improper and falls far short of a *prima facie* case of obviousness.

In response to these arguments, the Examiner asserts that "[f]orming an interior vehicle structure using different materials for separate parts of the structure to optimize the structure is also well known." (Office Action mailed July 27, 2006, p. 6). Breaking the Examiner's argument down, the Examiner appears to assert that 1) forming interior trim assemblies from different materials is well known in the art; and 2) it is known to use different materials to optimize an automotive structure. Based on

these two broad assertions the Examiner concludes it would have been obvious to form the compartment body from a first material and the cover from a second material having a melting point different than the first material. Concerning the first assertion, the Examiner has failed to provide a single reference that teaches forming interior trim assemblies from different materials. As noted above, Tiesler and Cannon fail to provide such a teaching or suggestion. Concerning the second assertion relied upon by the Examiner, there is no evidence in the prior art provided by the Examiner that "optimizing" the structure of Tiesler would lead to the claimed invention. The Examiner provides no further and more specific motivation other than so-called "optimization" because the prior art provides none. The motivation is found only in Appellants' disclosure and that, by definition, amounts to an improper use of hindsight analysis and reconstruction.

B. Claims 1 and 7-9 were improperly rejected under 35 U.S.C. § 103(a) as being obvious over Cannon in view of Tiesler and in further view of what was allegedly well known in the art at the time of Appellants' invention.

Claims 1 and 7-9 stand rejected under 35 U.S.C. § 103(a) as being obvious over Cannon in view of Tiesler and in further view of what was allegedly well known in the art at the time of Appellants' invention. Claim 1 is the only independent claim of this rejected group.

Cannon is directed to a vehicle door assembly (10) having a vehicle door pocket (12) with an opening (14) defined by a top edge (22). An insert (24) having a frame (26) is adapted to be received in pocket (12) and includes a lip (28) that engages the top edge (22) when inserted into pocket (12). Frame (26) includes partitions (32)

that subdivide door pocket (12) into compartments for storing articles. In reference to Fig. 2a of Cannon, the partitions (32) subdivide the frame (26) into a tissue dispenser (38), a storage bin (40), a notepad and calculator container (42), and a pen and pencil container (44). That figure also shows a cover (not numbered) associated with the tissue dispenser (38).

In regard to claim 1, the Examiner has again failed to establish a *prima facie* case of obviousness and for the same reasons provided above relative to Tiesler. The rejection of claim 1 based on the cited combination is in essence one step further removed from the rejection based on Tiesler alone. In particular, and as admitted in the Office Actions, Cannon does not teach or suggest the connecting members as recited in claim 1 or the "claimed materials." (Office Action mailed March 7, 2006 at p. 4; Office Action mailed July 27, 2006 at p. 4). Thus, the Examiner asserts a two-step modification of Cannon. The first step is to modify the tissue dispenser of Cannon according to the teaching of Tiesler so as to meet the recitation of integral connecting members. The second step is to modify that combination by what was allegedly well known in the art in the same manner as provided above so as to reach the invention of claim 1. The impropriety of modifying the teaching of Cannon according to the teaching of Tiesler need not be addressed. This is because the Examiner's proposed modification of Cannon with regard to materials having different melting points suffers from the same deficiencies as noted above.

In particular, Cannon provides no teaching or suggestion of the type of material used to form the cover and body of the tissue dispenser, and further provides no reason that would have motivated one of ordinary skill in the art to make the cover

and body of the tissue dispenser from materials having different melting points. In addition, and as noted above, Tiesler fails to cure this deficiency in Cannon. Thus, the rejection of these claims based on Cannon in combination with Tiesler and in further combination with what was allegedly well known in the art is improper for at least the reasons discussed above relative to claim 1 and the rejection over Tiesler alone. Accordingly, Appellants respectfully submit that claims 1 and 7-9 were improperly rejected under 35 U.S.C. § 103(a) and request that the rejection be overturned.

VIII. Conclusion

In conclusion, Appellants respectfully request that the Board reverse the Examiner's rejections of all the pending claims and that the application be passed to issue. If there are any questions regarding the foregoing, please contact the undersigned at 513/241-2324. Moreover, if any other charges or credits are necessary to complete this communication, please apply them to Deposit Account 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

Date: December 21, 2006

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APPENDIX OF CLAIMS

1. (Original) An automotive interior trim assembly, comprising:

a substrate; and

a storage compartment coupled to said substrate and adapted to store one or more items, said storage compartment comprising:

a compartment body defining a cavity adapted to store the one or more items and having an opening for gaining access to said cavity, said compartment body including at least one connecting member integrally formed therein made from a first material; and

a cover including at least one connecting member integrally formed therein and made from a second material having a different melting point from said first material, said at least one body connecting member cooperating with said at least one cover connecting member to couple said cover to said compartment body, said cover being moveable between an open position, wherein said cavity is accessible through said opening, and a closed position, wherein said cover overlies said opening.

2. (Original) The trim assembly of claim 1, wherein said at least one body connecting member comprises at least one projecting portion extending therefrom, and wherein said at least one cover connecting member comprises at least one receiving portion therein which receives said at least one projecting portion.

3. (Original) The trim assembly of claim 2, wherein said at least one projecting portion defines a pin.

4. (Original) The trim assembly of claim 2, wherein said at least one receiving portion defines a bore.

5. (Previously Presented) The trim assembly of claim 1, wherein said at least one body connecting member includes a pair of spaced apart connecting members, each said connecting member having at least one projecting portion defining a pin having an enlarged distal end configured as a circular portion, and wherein said at least one cover connecting member includes one connecting member, said cover connecting member including a pair of spaced apart receiving portions, each receiving portion defining a bore having an enlarged receiving portion configured as a circular recess, each said circular recess receiving one of said circular portions to couple said cover to said compartment body.

6. (Original) The trim assembly of claim 1, wherein said cover is pivotally movable between said open and closed position.

7. (Original) The trim assembly of claim 1, wherein said first material is selected from the group consisting of polybutylene terephthalate and polyamide 12 and said second material is selected from the group consisting of polypropylene, polyoxymethylene or polyamide 6.

8. (Original) The trim assembly of claim 1, wherein said first material has a higher melting point than said second material.

9. (Original) The trim assembly of claim 1 configured as a door panel.

10.-17. (Canceled)

18. (Original) An assembly for an automotive interior, comprising:

a first member including at least one connecting member integrally formed therein made from a first material; and

a second member including at least one connecting member integrally formed therein and made from a second material having a different melting point from said first material, said at least one first member connecting member cooperating with said at least one second member connecting member to pivotally couple said first member to said second member.

19. (Original) The assembly of claim 18, wherein said first member comprises a compartment body and said second member comprises a cover.

20. (Canceled)

APPENDIX OF EVIDENCE

(None)

APPENDIX OF RELATED PROCEEDINGS

(None)